

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, ex rel.)	
State Engineer,)	No. 69 CV 07941 MV/KK
)	
Plaintiff,)	Rio Chama Adjudication
)	
v.)	Pueblo Claims Subproceeding 1
)	
ROMAN ARAGON, et al.,)	
)	
Defendants.)	
_____)	

JOINT STATUS REPORT

Pursuant to this Court’s Order of December 28, 2020 (Document 11589), the undersigned parties submit this Joint Status Report. The parties are discussing possible resolution of Ohkay Owingeh’s water rights claims in the Rio Santa Cruz and Rio de Truchas as well. As a result, this Joint Status Report is being filed simultaneously in the companion case styled *State of New Mexico ex rel. State Engineer v. Abbott*, No. 68-CV-07488 (MV/JHR).

1. Progress in Settlement Negotiations

We report first on process matters. Since the last joint status report, the mediators have assisted the parties in formulating a better structure for the negotiations, including the formation of a technical committee and a Rio Chama Bosque Restoration and Shortage Sharing Working Group. The mediators prepare meeting agendas, prepare work plans and revise such plans as appropriate in light of the progress of the discussions, assign responsibilities to specific parties, check on the parties’ progress, and convene meetings both to move discussions forward and to report our work progress. Their summaries after each meeting help focus and sharpen the discussions. The mediators routinely check in with the parties before most meetings, and they

have conducted separate discussions with each of the parties as necessary to advance the discussions. Since the last report, Ohkay Owingeh, the principal claimant in these cases, has participated in 36 telephonic or virtual meetings with, *inter alia*, the mediators, the Federal Negotiation Team, Santa Clara Pueblo, Rio Chama Acequia Association, Acequia Norteñas, Rio Santa Cruz Irrigation District, and the State of New Mexico. The parties have met virtually as a group each month since the last report, in most cases in morning and afternoon sessions. Upon the partial lifting of COVID-19 pandemic restrictions, the acequias and the City of Española organized and led site visits of water use ditches and facilities for all parties and the mediators on June 9, 10, and 11, 2021. Ohkay Owingeh is still under COVID-19 pandemic restrictions that do not allow for site visits on its Grant, but expects to facilitate such visits in the future.

We report next on the substance of the negotiations. Ohkay Owingeh's claims for resolution have been significantly narrowed since the last report. In March, the Ohkay Owingeh Tribal Council decided by resolution to defer its claims to water on the mainstem Rio Grande until a general stream adjudication, or an acceptable alternative method, is initiated in which all claimants will participate. Ohkay Owingeh and the settlement parties no longer seek to resolve Ohkay Owingeh's Rio Grande water rights claims as part of the settlement of its claims in *Abbott* and *Aragon*.

The Santa Cruz Irrigation District and Santa Cruz Stream Systems Community Ditch Association have retained a technical consultant to assist with an assessment of potential methods by which the water supply in that system may be enhanced. The parties' technical committee has been tasked with preparing a scope of work and budget for this purpose. Discussions about the objectives the studies should achieve are ongoing. A scope of work and budget for one project has been completed, and the parties are seeking funding for that purpose.

If funding is secured, it is anticipated that the technical study will be completed by November 2021.

The State of New Mexico provided an outline for the form of a settlement agreement and a partial final judgment and final decree in this case. Settlement proposals are being modified to fit within the State's outline for the documents.

Ohkay Owingeh continues to discuss shortage sharing concepts with all parties specifically including Santa Cruz stream system irrigators, the Rio Chama Acequia Association, and Acequias Norteñas, and the Rio de Truchas acequias.

The parties have also made progress on addressing Ohkay Owingeh's claim for instream flows in the Rio Chama to restore and maintain the bosque riparian corridor on the Pueblo's land grant. As noted, a working group on this claim has been formed, and the participants are assessing various technical and legal issues that must be addressed before a path forward can be found.

Finally, since the last status report, the parties agreed that the *Abbott* settlement discussions should be expanded to include the assertion of water rights claims in the Rio Santa Cruz system by Santa Clara Pueblo and by the United States on that Pueblo's behalf. The U.S. Magistrate Judge in that case modified the confidentiality order on May 4, 2021, to apply to the discussions of possible resolution of the *Abbott* adjudication water rights of Santa Clara Pueblo and the United States on Santa Clara's behalf. Those claims will be addressed in the current settlement process underway to address Ohkay Owingeh's water rights claims in the *Abbott* adjudication. Santa Clara Pueblo is in the process of refining its settlement positions for the negotiations of its water rights claims and it is anticipated that process will continue for the

remainder of this calendar year. This development is referenced here because Ohkay Owingeh's claims in *Aragon* and *Abbott* are being negotiated in a single settlement process.

2. Scheduling of Dispositive Motions

The undersigned parties continue to believe that the resumption of litigation would hamper their efforts to resolve Ohkay Owingeh's and Santa Clara Pueblo's water rights claims through negotiation. The undersigned parties continue to be committed to the negotiation process. Therefore, they do not anticipate the need for this Court to schedule the filing and briefing of dispositive motions within the next six months.

3. Rescheduling the Trial

For the same reasons, the undersigned parties do not believe that the trial of Ohkay Owingeh's water rights claims in this Subproceeding should be scheduled at this time.

4. Expectations on Timing of Settlement

The parties, with the mediators' assistance, are working diligently to increase the pace of the negotiations and the achievement of milestones toward settlement. Predictions about the timing of settlement have been made more difficult by the addition to Ohkay Owingeh's settlement process of Santa Clara Pueblo's Rio Santa Cruz water claims and the United States' claims on its behalf. Ohkay Owingeh, Santa Clara Pueblo and the United States are collaboratively seeking to find ways to ensure claims development and assertion do not inordinately delay the settlement process. A comprehensive settlement of both Pueblos' claims and those of the United States within three years appears to Ohkay Owingeh to be a reasonable target date.

5. Other Matters

The undersigned parties suggest that the Court require the filing of a joint status report six months from now, on December 10, 2021, at which time they will report to the Court on their progress and on the question of whether dispositive motions should be scheduled, or litigation should otherwise resume.

All parties, except the City of Española, join in this Joint Status Report. The City of Española did not respond to Ohkay Owingeh's request to join this Joint Status Report.

Dated: June 10, 2021

Respectfully submitted,

/s/ Curtis G. Berkey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of June, 2021, I filed the foregoing electronically through the CM/ECF system, which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Curtis G. Berkey

Curtis G. Berkey